

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Owen Godshall	Team: Squad #4	CCRB Case #: 201500154	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/01/2015 12:55 AM	Location of Incident: Ludlow Street and Stanton Street	Precinct: 07	18 Mo. SOL 7/1/2016	EO SOL 7/1/2016	
Date/Time CV Reported Mon, 01/05/2015 5:57 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 01/09/2015 1:53 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Hickey	03213	950586	007 PCT
2. POF Karin Martinez	25505	928716	007 PCT
3. POM Jonathan Burke	04255	951568	007 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Jose Aracena	18880	951470	007 PCT
2. POM Luis Diaz	19018	950322	007 PCT
3. POM Michael Palombo	22030	904742	007 PCT
4. POM Luis Perez	21352	951043	007 PCT
5. SGT Yevgeniy Bushuyev	400	946670	007 PCT
6. POM Joseph Carlsen	15178	951586	007 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Hickey	Force: PO Brian Hickey used physical force against an individual.	
B.POM Brian Hickey	Discourtesy: PO Brian Hickey spoke discourteously to an individual.	
C.POM Jonathan Burke	Discourtesy: PO Jonathan Burke spoke discourteously to an individual.	
D.POF Karin Martinez	Force: PO Karin Martinez used pepper spray against § 87(2)(b)	

Case Summary

On January 5, 2015, Lt. Thomas Antonetti from the office of the Deputy Commissioner for Public Information filed this complaint with IAB after the incident was reported in the media. The case was referred to the CCRB via IAB log #2015-0414 on January 9, 2015. § 87(2)(g)

§ 87(2)(b) Videos of the incident were obtained from

§ 87(2)(b)

At approximately 12:55 a.m. on January 1, 2015, PO Luis Diaz and PO Jose Aracena of the 7th Precinct responded to a noise complaint at Ludlow Street and Stanton Street, in Manhattan. They found that a large crowd was playing music and dancing in the middle of the street, obstructing traffic. The officers called for backup. A large number of officers from several commands, including the 7th Precinct and PSA 4, responded. Among these officers were Sgt. Yeveniy Busheyev, PO Brian Hickey, PO Jonathan Burke, and PO Karin Martinez of the 7th Precinct. When officers asked for the music to be turned off, the crowd became hostile, and began chanting anti-police slogans, including, “All I want for Christmas is two dead pigs.” The police took no direct actions towards the crowd initially, instead waiting for them to disperse on their own. At approximately 1:21 a.m., one of the civilians, § 87(2)(b) was arrested for § 87(2)(b) by PO Mykhaylo Batsyk of PSA 4. § 87(2)(b) was taken into custody without incident.

At approximately 1:26 a.m., officers attempted to remove § 87(2)(b) from the street in a marked RMP. By this time, the civilians had cleared out of the street. When the RMP attempted to leave, however, another civilian, § 87(2)(b) stepped in front of the car and began dancing. Several officers, including Sgt. Busheyev and PO Hickey, approached § 87(2)(b) to arrest her for obstructing traffic. § 87(2)(b) fled to a nearby sidewalk. As Sgt. Busheyev attempted to handcuff § 87(2)(b) several unidentified civilians approached him. PO Hickey pushed one of these civilians away, telling him, “Get the fuck out of here” (**Allegation A and B**). The civilian PO Hickey pushed fell to the ground, at which point PO Burke and several unidentified officers stood over him and pushed him back to the ground when he attempted to stand. When another civilian approached PO Burke from behind, PO Burke turned towards him and stated, “Get the fuck off of me, alright?” He then made a second statement that included the words “Fucking” and “hit” (**Allegation C**).

Another civilian who had approached Sgt. Busheyev, § 87(2)(b) was arrested for attempting to interfere with the arrest. Several unidentified officers pushed § 87(2)(b) against the side of a parked car, where they attempted to pull his arms behind his back. As officers attempted to restrain him, PO Karin Martinez used her pepper spray on him (**Allegation D**). Once sprayed, the other officers were able to handcuff § 87(2)(b)

No other individuals besides § 87(2)(b) and § 87(2)(b) were arrested. The crowd dispersed after the second round of arrests. PO Burke issued a summons to a § 87(2)(b) No other summonses were issued.

Mediation, Civil and Criminal Histories

This case was ineligible for mediation due to the arrests. Neither § 87(2)(b) nor § 87(2)(b) filed notices of claim with the Comptroller’s office regarding

the incident (See Board Review: Notice of Claim Check), [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the second CCRB case involving [§ 87(2)(b)] [§ 87(2)(b)] [REDACTED]
- PO Hickey and PO Burke have been members of the service for three years, and there are no substantiated CCRB allegations against them. This is the first complaint filed against either officer.
- PO Martinez has been a member of the service for thirteen years, and there are no substantiated CCRB allegations against her. No pepper spray allegations have been made against her. Force allegations against PO Martinez in 2008 and 2011 were closed as exonerated.

Potential Issues

- [§ 87(2)(g)] [REDACTED]
- On January 23, 2015, [§ 87(2)(b)] [REDACTED], an attorney representing both [§ 87(2)(b)] [REDACTED] and [§ 87(2)(b)] [REDACTED] contacted the CCRB and stated that neither of her clients were willing to provide sworn statements regarding the incident due to pending criminal and civil proceedings.
- Between January 13, 2015 and February 20, 2015, five telephone calls were made to [§ 87(2)(b)] [REDACTED]. Messages were left on each call. Please-call letters were mailed to him on January 12, 2015 and January 21, 2015. Neither letter was returned to the CCRB by the US Postal Service. To date, [§ 87(2)(b)] [REDACTED] has not responded to these contact attempts. A May 5, 2015 search of the Department of Correction's online inmate database showed that [§ 87(2)(b)] [REDACTED] is not incarcerated (See Board Review: Inmate Lookup).
- [§ 87(2)(b)] [REDACTED] was written by [§ 87(2)(b)] [REDACTED] who also identified himself as the person who recorded the footage attached to the article. [§ 87(2)(b)] [REDACTED] was contacted on February 20, 2015, during which time he scheduled an interview for February 24, 2015. He did not appear for this interview. On February 27, 2015, [§ 87(2)(b)] [REDACTED] rescheduled his interview for March 2, 2015. He did not appear for this interview, either. [§ 87(2)(b)] [REDACTED] did not call ahead to cancel or reschedule for either of his missed appointments.
- [§ 87(2)(b)] [REDACTED] It identified the person who recorded the attached footage as [§ 87(2)(b)] [REDACTED]. On January 26, 2015, [§ 87(2)(b)] [REDACTED] asked via email to consult with [§ 87(2)(b)] [REDACTED] before he provided a statement. On February 26, 2015, [§ 87(2)(b)] [REDACTED] stated that on the advice of [§ 87(2)(b)] [REDACTED] attorney, neither he nor [§ 87(2)(b)] [REDACTED] would provide a statement regarding the incident.

Findings and Recommendations

Allegations Not Pleaded

- In [§ 87(2)(b)] [REDACTED]'s article, he alleged that one of the officers who approached the individual playing music told him, "Turn that shit off." [§ 87(2)(b)] [REDACTED] did not provide a sworn statement regarding this allegation. This statement was not heard in any of the video footage. [§ 87(2)(g)] [REDACTED]

- § 87(2)(b) also stated that a plainclothes officer in a North Face fleece asked a civilian, “Why’d she fucking touch me?” He also alleged that this officer referred to a civilian as a “fucking faggot.” In § 87(2)(b)’s footage, a white male wearing a North Face fleece can be heard making both of these statements. The male does not have a shield displayed, and there are no other overt indications that he is a police officer. None of the officers interviewed recognized this individual, but they all stated that he was likely a bouncer from one of the nearby bars. None recalled any plainclothes officers responding to the incident. The officers generally stated that there were no plainclothes assignments at the time of the incident, due to the New Year’s holiday. § 87(2)(g)

- After PO Hickey pushes an unidentified civilian to the ground, he stands back up, at which point several other officers push him back to the ground. None of these officers punch, kick or strike this individual. Of these officers, only one, PO Burke, was identified by the investigation. § 87(2)(g)

Allegation A – Force: PO Brian Hickey used physical force against § 87(2)(b)

It is undisputed that PO Hickey pushed an unidentified individual to the ground while officers were struggling with § 87(2)(b). PO Hickey was interviewed at the CCRB on April 30, 2015 (See Board Review: PO Hickey Interview). He stated that when officers chased § 87(2)(b) to the sidewalk, several other individuals rushed towards her. Given the civilian’s failure to obey commands to disperse and anti-police rhetoric, PO Hickey feared that these individuals would attempt to interfere with § 87(2)(b)’s arrest, and possibly harm her arresting officers. In order to prevent this, PO Hickey pushed the first of these individuals on the chest, making contact with both hands. The individual fell to the ground as a result. Once this individual was pushed away, PO Hickey turned his attention to several other individuals who had approached § 87(2)(b) stepping between them and the arresting officers to prevent them from getting closer. He did not see what ultimately happened to the individual that he had pushed, and did not know if he was arrested. He denied using any further force against the other civilians.

§ 87(2)(b)’s arrest is shown starting at 0:10 in the first § 87(2)(b) video. She is chased to the sidewalk by a uniformed officer, identified by the investigation as Sgt. Busheyev. Several unidentified civilians also run up towards Sgt. Busheyev and § 87(2)(b) coming to within a foot of them. At 0:18, an officer identified by the investigation as PO Hickey runs towards these civilians and pushes one of them back-first against a nearby railing, and then pushes him to the ground. He then immediately turns towards the other civilians standing nearby. PO Hickey pushes two other individuals on the chest with both hands, but this force does not knock either down or move them backwards.

NYPD Patrol Guide procedure 203-11 states that officers may use limited force in order to overcome physical resistance while effecting an arrest (See Board Review: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)

Allegation B – Discourtesy: PO Brian Hickey spoke discourteously to § 87(2)(b)

It is undisputed that PO Hickey used profanity towards a civilian. At 3:55 in the § 87(2)(b) video, while pushing a civilian to the ground, PO Hickey states, “Get the fuck out of here.” During his interview, PO Hickey stated that he used profanity to convey to the civilian the gravity of the situation and to ensure compliance with his command.

During stressful street encounters, officers may use limited profanity within the context of a command in order to gain control of hostile or combative civilians. PD v. White, OATH Index #78667/03 (2004) (See Board Review: Legal Reference).

§ 87(2)(g)

Allegation C – Discourtesy: PO Jonathan Burke spoke discourteously to § 87(2)(b)

It is undisputed that PO Burke used profanity towards a civilian. At 4:10 in the § 87(2)(b) video PO Burke tells a civilian seen making contact with him from behind, “Get the fuck off me, alright?” He then makes a second statement that is not fully audible, but includes the words “fucking” and “hit.”

PO Burke was interviewed at the CCRB on April 2, 2015 (See Board Review: PO Burke Interview). He initially did not recall using profanity, but stated that he had been pushed from behind by an unidentified civilian while § 87(2)(b) was being arrested. When shown the video clip, he stated that this occurred immediately after he had been pushed from behind. He stated that he was attempting to force the person who had pushed him to step away. He denied that he was threatening to strike the individual. He also stated that his language reflected his general frustration with the civilians, who had been generally uncooperative throughout the incident. He further stated that he had been agitated by the civilians’ earlier references to anti-

police violence, as the incident occurred only a few weeks after two police officers had been killed in Brooklyn.

During stressful street encounters, officers may use limited profanity within the context of a command in order to gain control of hostile or combative civilians. PD v. White, OATH Index #78667/03 (2004) (See Board Review: Legal Reference).

§ 87(2)(g)

§ 87(2)(g)

Allegation D- Force: PO Karin Martinez used pepper spray against § 87(2)(b)

It is undisputed that PO Martinez used pepper spray against § 87(2)(b) while officers were attempting to place him under arrest. PO Martinez was interviewed at the CCRB on April 8, 2015 (See Board Review: PO Martinez Interview). She stated that she observed that several officers had pushed § 87(2)(b) against the side of a car, and were attempting to place him in handcuffs. § 87(2)(b) was resisting the officers by pulling his arms away from the officers. In order to overcome § 87(2)(b)'s resistance, PO Martinez sprayed him once in the face, depressing the spray for only a few seconds. Once sprayed, § 87(2)(b) ceased his resistance, allowing the other officers to pull his hands behind his back.

In the first § 87(2)(b) videos, § 87(2)(b) can be seen at 0:30 pushed against the side of a parked white car. Officers then attempt to pull his arms behind his back. § 87(2)(b) reacts by pulling his hands away from them. In the third video, § 87(2)(b) is again seen held against the side of the car. While his right arm appears to be behind his back, his left arm is free. At 0:08, an officer identified by the investigation as PO Martinez is seen holding her pepper spray up to his face. The subsequent spraying is not seen on the video. In the § 87(2)(b) video, however, § 87(2)(b) is seen at 4:53. He allows an officer to pull his free left arm behind his back, without offering any additional resistance (See Board Review: Video).

NYPD Patrol Guide procedure 212-95 states that officers may use pepper spray in order to subdue and arrest a suspect who is offering active physical resistance (See Board Review: Legal Reference).

§ 87(2)(g)

Team: _____

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date